

REMARKS

Status of Claims

Claims 65-72, 89-94, 98-109 and 113-128 are pending in the present application. Claim 128 is added. Support for these amendments can be found, *inter alia*, at page 15, lines 18-19 of the instant specification. No new matter is added.

Response to Restriction Requirement

In the Office Action of March 31, 2009, the Examiner requested restriction under 35 U.S.C. §§ 121 and 372. The Restriction Requirement requires that Applicants elect one of the following allegedly distinct inventions:

Groups I-XV, claim(s) 65-72, drawn to implantable biocompatible cell device comprising transfected cells encoding the polypeptides of SEQ ID NOs: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24. Note that each separate cell encoding a specific and distinct SEQ ID NO must further be elected to be fully responsive to this restriction (i.e., not species) election requirement.

Group XVI, claim(s) 89-91, drawn to methods of treating immunological disorders with a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XVII, claim(s) 89-91, drawn to methods of treating immunological disorders with a nucleic acid encoding a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XVIII, claim(s) 92-94 & 98-106, drawn to methods of treating nervous system disorders with a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XIX, claim(s) 92-94 & 98-106, drawn to methods of treating immunological disorders with a nucleic acid encoding a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XX, claim(s) 107, drawn to methods of generating a neuron from a neuronal stem/precursor cell comprising exposing the cells to a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XXI, claim(s) 108-109, drawn to methods of expanding or differentiating mammalian cells comprising exposing the cells to a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XXII-XXX, claim(s) 108-109, drawn to methods of expanding or differentiating mammalian cells comprising exposing the cells to a nucleic acid encoding a polypeptide of SEQ ID NO: 3, 4, 5, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23 or 24.

Group XXXI-XXXIX, claim(s) 113-123, drawn to isolated polypeptides of SEQ ID NOs: 3, 8, 13, 19, 20, 21, 22, 23 or 24. Note that a separate and distinct SEQ ID NO must further be elected to be fully responsive to this restriction (i.e., not species) election requirement.

Group XL-XLVIII, claim(s) 113-123, drawn to isolated polynucleotides encoding the polypeptides of SEQ ID NOs: 3, 8, 13, 19, 20, 21, 22, 23 or 24. Note that a separate and distinct SEQ ID NO must further be elected to be fully responsive to this restriction (i.e., not species) election requirement.

Please note the description of Group XIX contains an error. This group relates to treating nervous system disorders and not to treatment of immunological disorders.

Election

In response to the Restriction Requirement, Applicants provisionally elect the invention of Group XVIII, claims 92-94, 98-106, and 128, *with traverse*. Applicants moreover reserve the right to file divisional application(s) directed to non-elected subject matter.

Traversal

Applicants respectfully traverse the Examiner's restriction requirement and request withdrawal of the requirement for the following reasons. The Examiner alleges that there is no special technical feature for Groups I-XV because WO 01/39786 (Innogenetics) teaches implantable devices comprising cells secreting the recited polypeptides. However, there is no such disclosure in WO 01/39786. The Examiner has failed to clearly identify where in the WO 01/39786 the alleged teaching can be found. Reconsideration is respectfully requested.

Furthermore, the restriction between groups XVIII and XIX is improper. Rule 13 does allow multiple products and methods within a single application as long as those products and methods share the same or corresponding special technical features. In particular, the PCT Examination Guidelines specifically provide that a protein and its encoding polynucleotide share a common technical feature (PCT INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION GUIDELINES; section 10.59, example 39).

Furthermore, under PCT provisions, Groups XVIII, XIX, and XX do relate to the same inventive concept under Rule 13.2 PCT. The inventive concept is the provision of a function for the claimed polypeptide and the encoding polynucleotide in the treatment of neurological disorders and the corresponding effect on neuronal cells and neuronal precursors. Therefore these three groups constitute one invention according to PCT rules and the restriction is improper.

Finally, a requirement for restriction is only proper when a serious burden is placed on the Examiner. Applicants respectfully submit that a search and examination of all claims may be made without imposing a serious burden on the Examiner. Further, an important advantage in pursuing just one application encompassing all of the invention groups cited by the Examiner is that the examination work of the U.S. Patent and Trademark Office would be simplified, insofar as duplication of searching effort would be eliminated. Accordingly, the restriction requirement will serve no purpose other than to unfairly and improperly require Applicants to pay duplicative PTO fees to obtain patent protection for their invention.

Applicants respectfully request prompt examination in the application. If there are any questions regarding this Response, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

It is believed that no fee is associated with this Amendment, however the Commissioner is hereby authorized to charge any fee that may be due to Deposit Account No. 50-0311, Ref. No. 19313-015 NATL.

Respectfully submitted,

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